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THE NATIONAL ASSEMBLY

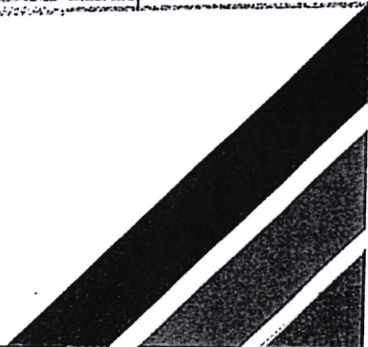
COMMITTEE ON REGIONAL INTEGRATION

REPORT ON VISIT TO SEMI-AUTONOMOUS INSTITUTIONS OF THE EAST
AFRICAN COMMUNITY IN ARUSHA, TANZANIA

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 JUN 2023	DAY: Tuesday
TABLED BY:	Hon. Wanjiku Muchia (Chairperson, Committee on Regional Integration)
CLERK-AT THE-TABLE:	Inzafu Mwale

JUNE 2023

*The Directorate of Audit, Appropriations
& other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.*



Vol. 5

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ABBREVIATIONS/ACRONYMS

CMP	Common Market Protocol
EACA	East African Competition Authority
EACJ	East African Court of Justice
EAC	East African Community
GDP	Gross Domestic Product
SAGA's	Semi- Autonomous Government Authorities
SCT	Single Customs Territory
SO	Standing Order

CHAIRPERSON'S FOREWORD

The East African Community (EAC) is a regional intergovernmental organization comprising of seven (7) Partner States: the Democratic Republic of Congo, the Republics of Burundi, Kenya, Rwanda, South Sudan, Uganda, and the United Republic of Tanzania.

The EAC whose headquarters is in Arusha is home to an estimated 300 million citizens. The Community has a land area of 4.8 million square kilometers and a combined Gross Domestic Product of US\$ 240 billion whose realization bears great strategic and geopolitical significance and prospects for the renewed and reinvigorated EAC.

The work of the EAC is guided by its Treaty which established the Community. It was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three Partner States being Kenya, Tanzania and Uganda. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007, while the Republic of South Sudan acceded to the Treaty on 15 April 2016 and became a full Member on 15th August 2016. The Community's newest member, the Democratic Republic of the Congo acceded to the EAC Treaty on 8th April 2022.

Since the coming into force, the Treaty, in pursuance of the provision of Article 5(2), the EAC has registered significant achievements in the implementation of the four pillars of the EAC integration agenda i.e. the Customs Union, Common Market, Monetary Union and Political Federation.

The community is considered the most successful regional economic community in Africa as it is progressing well towards continental integration. In a bid to implement the four pillars of the EAC Integration, the Assembly and other Organs and Institutions of the Community have over the years initiated a number of legal and policy reforms which have led to among others the establishment of the Single Customs Territory, free movement of labour, free movement of persons, free movement of capital, free movement of goods and services, rights of residence and right of establishment.

This report contains the presentations, observations and recommendations of the Committee on its familiarization visit to Semi-Autonomous institutions/organs of the East African Community undertaken from 2nd to 8th April 2023, the objectives were as follows-

- i) To appreciate the operations of the EAC Institutions/Organs that provide services in the facilitation of EAC integration;
- ii) To establish a basis for awareness creation in the East African region on the role of the Parliament in the integration process;
- iii) To enhance mutual relationships and sustainable networking between the National Assembly and the EAC organs and institutions; and
- iv) To get feedback and recommendations from EAC institutions/Organs on areas of policy support and advocacy.

In order to appreciate the Community's services in the integration process, it needs to urgently address key challenges adversely affecting the implementation of its integration agenda. Delayed remittance of Partner States' equal contribution to the EAC budget, political/economic disputes among some Partner States, lack of awareness of Treaty obligations by various stakeholders, dependence on donor support for core functions of the Community, fear to cede

power and authority to Organs and institutions and under staffing in the EAC Organs and Institutions need to be addressed.

To address the challenges associated with delayed financing, the council of ministers is encouraged to creatively explore alternative financing mechanisms including the establishment of a levy on imports to the EAC region, or exports out of the region. The founding partner states could also consider paying contributions due for South Sudan and Burundi on the BIG Brother basis and review the EAC treaty to allow partner states' contributions to be based on the ability to pay and retention of veto power by the highest paying partner states. The Council of Ministers to consider and increase the budgets of all institutions/organs of the East African Community. There is also a need to review the current EAC treaty and initiate mechanisms of mobilizing funds at the regional level to inspire regional ownership of EAC projects and programmes.

In addition, the council of ministers should also establish a basis for awareness creation in the East African region on the role of the Parliament in the integration process.

In considering the report, the committee had briefings from the representative of the EAC Secretary-General and Head of various institutions and organs of the East African Community as well as submission by the Director General of Eastern and Southern Africa Management (ESAMI).

The committee also had an engagement with the Ministry of East African Community and Regional development whereby various concerns were raised on the matter of the integration process and on the inspection visit to the One Stop Boarder Points.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Regional Integration and pursuant to Standing Order 212 it is my pleasure and duty to present to the House, the Committee's **Report of the Inspection visit to Semi-Autonomous Institutions of the East African Community in Arusha, Tanzania**

HON. WANJIKU MUHIA, M.P.

1.0 INTRODUCTION

1.1 Establishment and Mandate of the Committee

1. The Committee on Regional Integration is a select Committee of the House established under Standing Order 212 of the National Assembly's Standing Orders which sets out the mandate of the Committee. The Committee was constituted in October 2023 following adoption of a motion on membership of committees by the House and is comprised of twenty-one (21) members who will serve for the life of the 13th Parliament.
2. The Committee is also mandated to –
 - (a) examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
 - (b) examine the Bills introduced in the East African Legislative Assembly and Acts of the East African Community;
 - (c) examine the records of all the relevant debates and resolutions of the meetings of the Pan African Parliament, the African, Caribbean and Pacific European Union Joint Parliamentary Assembly and other regional integration bodies; and
 - (d) inquire into and examine any other matter relating to regional integration generally requiring action by the House.

1.2 Committee Membership

The Committee comprises of the following twenty-one Members -

Hon. Wanjiku Muhia, MP – Chairperson
Kipipiri Constituency
United Democratic Party

Hon. Farah Salah Yakub, MP- Vice- Chairperson
FAFI Constituency
United Democratic Party

Hon. David Ochieng Ouma, MP
Ugenya Constituency
Movement for Democracy and Growth

Hon. Rael Chepkemai Kasiwai, MP
West Pokot (CWR)
Kenya Union Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency
Orange Democratic Party

Hon. Elizabeth Karambu Kailemia, MP
Meru (CWR)
United Democratic Party

Hon. Joseph Gachoki Gitari, MP
Kirinyaga Central Constituency
United Democratic Party

Hon. Beatrice Chepng'eno Kemei, MP
Kericho (CWR)
United Democratic Party

Hon. Didmus Wekesa Barasa Mutua, MP
Kimilili Constituency
United Democratic Party

Hon. Fatuma Hamisi Masito, MP
Kwale (CWR)
Orange Democratic Party

Hon. Danson Mwashako Mwakuwona, MP
Wundanyi Constituency
Wiper Democratic Movement -

Hon. Irene Njoki Mrembo, MP
Bahati Constituency
Jubilee Party

Hon. Andrew Adipo Okuome, MP
Karachuonyo Constituency
Orange Democratic Party

Hon. Japheth Nyakundi Mokaya, MP
Kitutu Chache North Constituency
United Democratic Party

Hon. Christopher Aseka Wangaya, MP
Khwisero Constituency
Orange Democratic Party

Hon. Peter Ochieng Orero, MP
Kibra Constituency
Orange Democratic Party

Hon. Naomi Jillo Waqo, MP
Marsabit (CWR)
United Democratic Party

Hon. Julius Kipletting Rutto, MP
Kesses Constituency
United Democratic Party

Hon. Zaheer Jhanda, MP
Nyaribari Chache Constituency
United Democratic Party

Hon. Peter Kalerwa Salasya, MP
Mumias East Constituency
Democratic Alliance Party

Hon. Richard Kipkemoi Yegon, MP
Bomet East Constituency

United Democratic Party

1.3 Committee Secretariat

3. The secretariat facilitating the Committee comprises –

Mr. Mohamed Jimale
Clerk Assistant I (Team Leader)

Ms. Purity Macharia
Clerk Assistant III

Mr. Bernard Toroitich
Clerk Assistant III

Mr. Dominic Kyalo
Legal Counsel II

Ms. Damacrine Kwamboka
Research Assistant II

Ms. Edith Chepngeno
Media Relations Officer II

Mr. Samuel Nyambei
Serjeant at Arms

Mr. Rahab Chepkilim
Audio Officer

Ms. Faith Oira
Protocol officer

2.0 BACKGROUND

2.1 Resolution and delegation

1. In a meeting held on 9th March, 2023, the Committee on Regional Integration resolved to undertake a familiarization visit to the Semi-Autonomous institutions/organs of the East African Community and the Eastern Southern Management Institute (ESAMI) on 2nd to 8th April 2023 in Arusha, United Republic of Tanzania. The delegation comprising of five (5) members heard submissions from the institutions head.
2. The delegation consisted of the following members -
 - 1) Hon. Farah Salah Yakub, MP- Vice- Chairperson - **Leader of the Delegation**
 - 2) Hon. Andrew Adipo Okuome, M.P.
 - 3) Hon. Beatrice Chepng'eno Kemei, MP
 - 4) Hon Richard Kipkemoi Yegon, MP
 - 5) Hon Peter Kalerwa Salasya, M.P.
 - 6) Mr. Jimale Mohamed - Delegation Secretary

2.2 Objectives of the Study Visit

3. The purpose of the visit was to familiarize with the institutions of the East African Community based in Arusha, Tanzania. The specific objectives include-
 - a) To appreciate the operations of the EAC Institutions/Organs that provide services in the facilitation of EAC integration;
 - b) To establish a basis for awareness creation in the East African region on the role of the Parliament in the integration process;
 - c) To enhance mutual relationships and sustainable networking between the National Assembly and the EAC organs and institutions; and
 - d) To get feedback and recommendations from EAC institutions/Organs on areas of policy support and advocacy.

2.3 Expected Outcomes

4. The following were the expected outcomes of the delegations engagement with EAC organs and institutions:
 - a) A greater understanding of the achievements, challenges and opportunities of the integration process;
 - b) Enhanced mutual relationships networking between Partner National Assemblies and the Semi-autonomous Institutions/Organs of the East African Community ;
 - c) Adoption of the necessary policy/legislative recommendations to address challenges specifically on funding mechanisms and ratification of stalled protocols.

3.0 EAST AFRICAN COMMUNITY (EAC) – THE COMMUNITY

3.1 Brief Background of the East African Community (EAC)

5. The East African Community (EAC) is a regional intergovernmental organization of seven (7) Partner States: The Democratic Republic of the Congo, the Republic of Burundi, Kenya, Rwanda, South Sudan, Uganda, and the United Republic of Tanzania, with its headquarters in Arusha, Tanzania¹.
6. EAC is considered the most successful regional economic community in Africa. In a bid to implement the four pillars of the EAC Integration, the Organs and institutions of the

¹ www.eac.int

Community have over the years initiated a number of legal and policy reforms which have led to among others the establishment of the Single Customs Territory, free movement of labour, free movement of persons, free movement of capital, free movement of goods and services, rights of residence and right of establishment.

7. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18 June 2007 and became full Members of the Community with effect from 1 July 2007. The Republic of South Sudan joined on 15th April 2016 and became a full Member on 15th August 2016. The Community's newest member, the Democratic Republic of the Congo acceded to the EAC Treaty on 8th April 2022.
8. The EAC treaty covers cooperation agreements in every sector of the public service such as legal and constitutional issues, defense, foreign affairs, trade and industry; infrastructure planning and development; education, science and technology; health and social development; agriculture and food security; environmental management and natural resources; finance and monetary issues, political development and institutional governance. To actualize the areas of cooperation, the partner states have developed legal instruments including memoranda of understanding, cooperation agreements, pacts and protocols.
9. The current integration agenda started with the inauguration of a customs union that later graduated to a common market. Currently, the EAC is in the process of developing a legal framework for the monetary union, and ultimately a political federation among the seven-member states. At formulation, the founding fathers anticipated a higher flow of investment and trade as a result of the Customs Union. The consequent increase in trade completion was also expected to lead to improved quality of exports from individual countries. Member states still view regional integration as an essential plank of their development strategy and an important ingredient of stimulating increased trade, investment and economic growth².

3.2 The EAC Management Structure

10. The EAC organization structure incorporates the Heads of State Summit as the top organ, charged with the responsibility of giving strategic direction towards the realization of the goals and objectives of the Community. The summit relies on the support and advice of the Council of Ministers, which is the central decision-making and governing Organ of the EAC. Its membership constitutes Ministers or Cabinet Secretaries from the Partner States whose dockets are responsible for regional co-operation. The Council meets twice a year to assist in maintaining a link between the political decisions taken at the Summits and the day-to-day functioning of the Community. Regulations, directives and decisions taken or given by the Council are binding to the Partner States and all other Organs and Institutions of the Community other than the Summit, the EACJ and EALA.
11. At the middle level is the coordinating committee, which has the primary responsibility for regional cooperation and coordinates the activities of the Sectoral Committees. The committee recommends to the Council the establishment, composition and functions of such Sectoral Committees. It draws its membership from Permanent/Principal Secretaries responsible for regional co-operation from the Partner States.
12. At the lower level, there are sectoral Committees that conceptualize programmes and monitor their implementation. Sectoral committees are usually established by the Council of Ministers on the recommendation of the Coordinating Committee. The Sectoral Committees meet as often as necessary for the discharge of their functions. The most

² www.eac.int/

notable Institutions/Organs of the EAC include, among others: East African Community Secretariat, East African Competition Authority and East African Court of Justice.³

³ Report on the inspection visit to EAC Organs in Arusha - 12th Parliament.

3.0 VISIT TO EAC ORGANS AND INSTITUTIONS BASED IN ARUSHA, TANZANIA

13. The delegation visited the Institutions/Organs of the East African Community at the headquarter in Arusha, Tanzania, namely; the EAC Secretariat, the East African Competition Authority, East African Court of Justice; and the Eastern and Southern African Management Institute (ESAMI).

3.1 EAST AFRICAN COMMUNITY SECRETARIAT

14. The delegation visited the EAC secretariat in Arusha, United Republic of Tanzania on Monday 3rd April 2023 and was received by the Representative of the Secretary-General of the EAC Secretariat Mr. Simon Owaka, who took Members through the journey of the Community and progress so far made.
15. Mr. Simon Owaka submitted that the East African Community (EAC) is a regional intergovernmental organization of seven (7) Partner States: The Democratic Republic of the Congo, the Republics of Burundi, Kenya, Rwanda, South Sudan, Uganda, and the United Republic of Tanzania, with its headquarters in Arusha, Tanzania. The EAC is home to an estimated 300 million citizens, of which over 22% is composed of urban population. With a land area of 4.8 million square kilometers and a combined Gross Domestic Product of US\$ 240 billion (EAC Statistics for 2019), its realization bears great strategic and geopolitical significance and prospects for the renewed and reinvigorated EAC.
16. He further submitted that the work of the EAC is guided by the Treaty establishing the Community which was signed on 30 November 1999 and entered into force on 7 July 2000 following its ratification by the original three Partner States - Kenya, Tanzania and Uganda. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18 June 2007 and became full Members of the Community with effect from 1 July 2007, while the Republic of South Sudan acceded to the Treaty on 15 April 2016 and became a full Member on 15 August 2016. The Community's newest member, the Democratic Republic of the Congo acceded to the EAC Treaty on 8th April 2022.
17. Mr. Simon Owaka also submitted that Article 5 (2) of the Treaty Establishing the East African Community commits the Partner States to undertake and to establish among themselves and in accordance with the provisions of the Treaty a Customs Union, Common Market, Monetary Union and ultimately a Political Federation to strengthen and regulate the industrial, commercial, infrastructure, cultural, social, political and other relations of the Partner states.
18. The delegation was informed that the East African Legislative Assembly is the legislative organ of the East African Community established under Article 9 of the Treaty Establishing the East African Community. Article 49 of the Treaty bestows upon the Assembly the functions of legislation, oversight and representation and provided for the establishment of committees by the Assembly for such purposes, as it deems necessary.

3.1.1 Customs Union

The Secretary-General informed the delegation that;

19. The EAC custom union was founded in 2005 is embedded in the EAC Customs Management Act, which is fully functional and since 2010 the EAC has been a single customs territory .It provides for the elimination of internal tariffs and a Common External Tariff structure of 0% for raw materials, 10% for intermediate goods and 25% for finished goods. Custom union provides for rules of origin that govern the applicable tariff rates. The following recent advancements related to this pillar are:-

- i) **Implementation of the Single Customs Territory** - The EAC Partner States are currently implementing the Single Customs Territory (SCT) regime which is at the final stage towards the full implementation of the Customs Union. The SCT is aimed at faster clearance of goods and therefore reducing the cost of doing business in the region.
- ii) To continuously reposition EAC as a major player in international trade and strengthen intra-EAC trade, the region commenced the comprehensive review of the EAC Common External Tariff (CET) and the EAC Customs Management Act (CMA), 2004. Under the CET review, Partner States have adopted a four-band structure (0%, 10%, 25% and a rate above 25%). The reviewed CET and EAC CMA are expected to enhance trade facilitation and spur growth and economic development in the region.
- iii) **Customs Interconnectivity Programmes.** Since the commencement of the SCT, Partner States have implemented bilateral country system-to-system interconnectivity and data exchange protocols. This has enabled the exchange of electronic documents such as manifests, customs declarations, releases, exit notes and arrival notifications. The implementation of SCT and other trade facilitation initiatives has seen major strides in the movement of goods across the borders within the region.
- iv) **Resolution of Non-Tariff Barriers (NTBs).** Non-tariff barriers continue to pose challenges to the EAC integration process by restricting the free movement of goods within the region as evident from reports of the EAC Regional Monitoring Committee on NTBs. Partner States have been using the EAC regional mechanism to resolve most of the NTBs and regulations for the elimination of NTBs have been adopted.
- v) The emerging regional integration blocs. The EAC is part of the COMESA and SADC integration blocs under the Tripartite Free Trade Agreement (TFTA). More recently, Partner States signed the Africa Continental Free Trade Area which came into force on 30th May 2019.
- vi) The Africa Continental Free Trade Area (AfCFTA) presents opportunities for trade and development. It has the potential to integrate Africa's fragmented markets, enhance competitiveness, increase access to regional and global markets and better re-allocation of resources. The AfCFTA is also expected to facilitate the attraction of FDI into the continent with a positive impact on industrial development and economic growth, especially in the EAC region.

3.1.2 Common Market

20. The Protocol for the establishment of the EAC Common Market was signed in November 2009 and came into force on 1st July 2010 upon ratification by the Partner States. The Common Market provides free movement of goods, persons, labour, services and capital; and rights of establishment and workers access to opportunities available across the borders without discrimination.
21. The following activities have been undertaken to ease the cross-border movement of persons, labour and services include:
 - i) Issuance of the new international EA e-passport: Since February 2019, all Partner States except the Republic of South Sudan commenced issuance of the International East African Community e-Passports.
 - ii) Free movement of persons and workers: Easing of procedures, formalities and fees connected with visas as well as work and residence permits.

- iii) Mutual Recognition Agreements (MRAs): so far, four Mutual Recognition Agreements (MRAs) have been signed and are under implementation for the Accountants, Engineers, Architects and Veterinarians professionals.

3.2.3 Monetary Union

- 22. The EAC Partner States signed a protocol on the establishment of the East African Monetary Union on 30th November 2013 setting out the process and convergence criteria for attainment of a Monetary Union in the EAC region for 10 years.
- 23. The envisaged Monetary Union is expected to be in place in 2024 with the introduction of a common currency to replace the National Currencies and the establishment of a Regional Central Bank and the introduction of a common single currency is aimed at facilitating the reduction in transaction costs and removal of foreign exchange volatility between the Partner States.

3.1.4 Political Federation

- 24. Article 123 (6) of the Treaty empowers the Summit to initiate the process towards the establishment of the Political Federation of the Partner States by directing the Council of Ministers to undertake the process.
- 25. At the 18th Summit of Heads of State of the East African Community held on 20th May 2017, the Summit adopted the Political Confederation as a transitional model of the East African Political Federation and directed the Council of Ministers to constitute a team of constitutional experts to draft the constitution for the Political Confederation and report to the 19th Summit of Heads of State.
- 26. The Council in its report to the 19th Summit of Heads of State in February 2018, reported on the progress of attaining Political Federation and presented the Concept Note, Road Map and Terms of Reference for Constitutional Experts. The Summit directed the Council to prioritize the Constitution drafting process and provide the required funding.
- 27. The EAC Secretariat has realized the following milestones;
 - i) The EAC is implementing road and railway projects in the Central and Northern Transport Corridors. Investment in infrastructure projects continues to receive the utmost political attention by the EAC Heads of States as expressed during their biennial retreats on infrastructure development and financing;
 - ii) The establishment of the One-Stop Border Post (OSBP). EAC has fully operationalized and trained personnel at 13 (OSBPs). The posts are aimed at facilitating trade and the free movement of goods in the region.
 - iii) In the health sector, EAC Partner States have expanded the capacity for delivery of high-quality health services, training and research through Regional Centres of Excellence (RCoE). The center is located in partner states: Kidney Diseases (Kenya); Heart Diseases (Tanzania); Cancer disease (Uganda); Health, Biomedical Engineering and Health Rehabilitation Sciences hosted by Rwanda, and; Vaccines, Immunization and Health Supply Chain Management, also hosted by Rwanda;
 - iv) Partner States have jointly operationalized an EAC Regional Network of Reference Laboratories for Communicable Diseases to strengthen the region's capacity to diagnose and respond to outbreaks of highly infectious diseases;
 - v) The Lake Victoria Water and Sanitation (LVWATSAN II) programme, coordinated by Lake Victoria Basin Commission is being implemented in 15 towns in five Partner States. LVWATSAN II has the objective of improving sustainable water supply and sanitation solutions in 15 towns within the Lake Victoria Basin. The affected towns include Ngozi, Muyinga and Kayanza located in Burundi; Keroka,

- Kericho and Isebania/Sirare located in Kenya; Kayonza, Nyagatare and Nyanza located in Rwanda; Geita, Sengerema and Nansio of the United Republic of Tanzania, and; Mayuge, Kayabwe-Bukakata, Ntungamo of the Republic of Uganda;
28. He further informed the delegation that, the Secretariat is facing the following challenges;
- i) The secretariat works under strenuous circumstances owing to low and unreliable funding;
 - ii) Partner states acting nationally and giving national interests priority over regional interests
 - iii) Inadequate implementation of Council resolutions and directives; and
 - iv) Some partner states moving slowly in adopting EAC instruments.

3.2 THE EAST AFRICAN COURT OF JUSTICE (EACJ)

29. The delegation visited the Court Premises on Monday 3rd April, 2023 and was received by Mr Boniface N. Ogoti, who is a Court Clerk.
30. The delegation was then informed that the EACJ is one of the key organs of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community. The Court became operational after its inauguration by the Summit and the swearing-in of judges and the Registrar on 30th November 2001. The operations of the Court during the transitional period are ad hoc until the Council of Ministers determines that there is enough business to make it operational. It means that the judges are not required to permanently reside in Arusha where the temporary seat of the Court is located but they only convene to conduct the business of the Court when the need to do so arises.
31. The delegation was also informed that the East African Court of Justice ensures the adherence to law in the interpretation, application of and compliance with Article 23 of the EAC Treaty. It provides necessary decisions and solutions to legal problems or disputes. Indeed, through other legal mechanisms, the Court prevents such disputes from escalating into lawsuits. Furthermore, the decisions of the Court have precedence over decisions of national courts on a similar matter pursuant to Article 33 of the Treaty.
32. The delegation was also informed that the Court is composed of judges appointed by the Summit from each of the Partner States of the EAC. Under the Treaty, the Court may consist of a maximum of ten (10) judges in the First Instance Division and five (5) judges in the Appellate Division.
33. (name of presenter) submitted that there are a total of eleven judges sitting in Arusha, (6) six judges in the First Instance Division, and (5) five in the Appellate Division. The judges of the Court are appointed by the Summit from among sitting judges of any national court of judicature or from jurists of recognized competence and the Registrar is appointed by the Council of Ministers.
34. The mandate of the court was extended to matters related to trade and human rights when the Heads of state signed a protocol to that effect. Parties that are by treaty allowed to file matters before the court include:
- i. Partner states against other partner states or EAC organs;
 - ii. The Secretary-General against the Partner States;
 - iii. EAC employees against the Secretary-General;
 - iv. Legal and natural persons against partner states and EAC organs.
35. (name of presenter) submitted that the court plays advisory roles including advising the Council of ministers, the summit and partner states on questions of law in the treaty. For instance, the court has previously advised EAC organs on the principle of variable

geometry, under which partner states are allowed to implement only those aspects of EAC programmes that their level of preparedness allows. The principle does not require simultaneous implementation of programmes by partner states.

36. Since its inception, 244 substantive cases have been filed before the court, out of which 212 have been heard and determined. 32 cases are pending, awaiting hearing and determination while out of 32 bills of costs filed, 30 have been taxed.

37. **The delegation was further informed that the Court had made significant achievements in the effort to dispense justice by leveraging on ICT to fast-track the filing of cases and manage the life cycle of matters in court. The court registries are equipped with basic equipment such as computers and internet connection for ease of transmission of case records from one registry to another. The handling of cases electronically has assisted to transform cases into the ICT platform.**

38. The Committee also heard that the Court is faced with the following challenges;

- i) Delay in operationalizing the Court's administrative and financial Autonomy
- ii) The service of the Judges of the Court continues to be ad-hoc and only the President and the Principal Judge are based in Arusha thus affecting the performance of the Court.
- iii) The ad-hoc nature of the services of Judges and the limitation of their tenure by either age or duration of service negatively impact the performance of the Court.
- iv) Visibility of the Court continues to be a challenge as there is limited knowledge of the Court among the citizenry, legal practitioners, and judicial officers resulting in limited use of the Court.
- v) The court, like most other organs of EAC, faces financial difficulties arising from delayed partner state funding.

3.3 THE EASTERN AND SOUTHERN AFRICAN MANAGEMENT INSTITUTE (ESAMI)

The Director General, Prof. Martin Lwanga took the delegation through his presentation as follows -

39. The Eastern and Southern African Management Institute (ESAMI) is an intergovernmental regional management development centre. ESAMI's head office is located in Arusha, Tanzania.
40. The institute was established with the primary objective of providing the region with trained personnel in a number of critical areas including policy management, transportation management, financial management, information technology management, health management, human resources management, project management, energy and environment management and gender management among others.
41. The focus was to train middle to senior managers from the region to improve their managerial performance taking into consideration the global issues but with a regional focus relevant to the African environment.

3.3.1 ESAMI's Mandate, Mission, Vision and Philosophy

42. The Eastern and Southern African Management Institute (ESAMI) is a Pan African Regional Management Development Centre owned by ten member governments from the Eastern and Southern African region. These are Kenya, Malawi, Mozambique, Namibia, Seychelles, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. It is a service and market-oriented institution offering high level specialized management training, consultancy, education programmes and action-oriented management research services. Other countries which regularly participate in ESAMI management development programmes include Lesotho, Botswana, South Africa, Angola, Rwanda, Sierra Leone, Nigeria, Eritrea, Ivory Coast, Liberia, Ghana, the Gambia, Sudan, Ethiopia and Burkina Faso.
43. The UN Economic Commission for Africa officially designated ESAMI as The African Centre of Excellence in Management Development. The recognition has necessitated ESAMI to extend its services to all countries in Africa.

3.3.2 Mandate

44. ESAMI's mandate is to improve the performance and management effectiveness of public, private, and international organizations in Africa through Management training and education; management consultancy and advisory services; management research, knowledge generation and publications; and promotion of best practices in management.
45. Since its establishment in 1980, ESAMI has made contributions in the area of human resources and management development in the region. Its role as a Regional Management Development Institute has expanded as a result of increased demand by countries of the region and beyond. It has so far trained 75, 000 middle and top-level personnel in the government, public, private and civic organisations who have attended open management development programmes offered by the Institute.
46. ESAMI offers Certificate, Diploma and Bachelors' degree programmes in Business management. In addition to the regular short course programmes and tailor-made programmes. ESAMI also runs an Executive MBA programme that has enrolled 3,600 students from across Africa.

3.3.3 ESAMI's Capability and Comparative Advantages

47. ESAMI has been a converging centre where people from different countries meet to share and exchange experiences in a regional framework. The Institute facilitate improvements in managerial performance and effectiveness of client organizations⁴.

⁴ www.esami-africa.org

3.4 THE EAST AFRICAN COMMUNITY COMPETITION AUTHORITY^R

The Registrar Ms, Lilian K Mukoronia, made a presentation to the delegation -

48. Ms, Lilian K Mukoronia presented that the East African Community Competition Authority (Authority) is an institution of the East African Community (EAC) established in accordance with Article 9 of the Treaty for the Establishment of the East African Community. The Authority is specifically established by Section 37 of the East African Community Competition Act, 2006 in furtherance of the commitment of the Partner States, to cooperate in trade liberalization and development including matters of competition, under Article 75 of the Treaty establishing the East African Community.
49. She submitted that under the Protocol on the Establishment of the East African Community Customs Union (Customs Union Protocol) Article 21 and the (Common Market Protocol Article 33-36) Partner States undertook to prohibit any practice that adversely affects free trade including any agreement, undertaking, or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community.
50. The delegation heard that the Common market Protocol's strategic thrust is to create one flawless single market across the EAC Partner States. The protocol seeks to accelerate regional economic growth and development by introducing the free movement of goods, persons, labour, capital, and services, as well as the rights of establishment and residence.
51. The EACA is mandated to enforce the EAC Competition Act by promoting and protecting fair trade and providing for consumer welfare in the Community. The Act sets out that the objects of the competition policy and practice in the Community shall be to:

(a) enhance the welfare of the people in the Community by:

- i) protecting all market participants' freedom to compete by prohibiting anti-competitive practices;
- ii) protecting the opening of Partner States' markets against the creation of barriers to interstate trade and economic transactions by market participants;
- iii) guaranteeing equal opportunities in the Community to all market participants in the Community, and especially to small and medium-sized enterprises;
- iv) guaranteeing a level playing field for all market participants in the Community by eliminating any discrimination by the Partner States based on nationality or residence;
- v) providing consumers access to products and services within the Community at competitive prices and better quality;
- vi) providing incentives to producers within the Community for the improvement of production and products through technical and organizational innovation;
- vii) promoting economic integration and development in the Community;

(b) enhance the competitiveness of Community enterprises in world markets by exposing them to competition within the Community;

(c) create an environment that is conducive to investment in the Community;

(d) bring the Community's competition policy and practice in line with international best practices;

(e) strengthen the Partner States' role in relevant international organizations.

52. The delegation was informed that the function of the Authority is enshrined in Section 42 of the EAC Competition Act, 2006, which provides that the Authority has all powers, express and implied necessary for and conducive to the implementation and enforcement of the East African Community Competition Law. She also notified the delegation on the performance of its functions under the Act, the Authority shall have powers to:

1. Gather information;
2. investigate and compel evidence, including the search and seizure of documents;
3. hold hearings;
4. issue legally binding decisions;
5. impose sanctions and remedies;
6. refer matters to the Court for adjudication;
7. recommend to the Council to make regulations;

4.0 COMMITTEE OBSERVATIONS

53. The Committee having visited the various semi-autonomous institutions of the EAC in Arusha made the following observations:-

- 1) The current financial shortages occasioned by delayed partner state contributions and dwindling development partner support continue to adversely affect the performance of all EAC institutions thus frustrating the implementation of key projects and programmes meant to uplift the lives of East Africans.
- 2) The free movement of the EAC-originated goods is frustrated by the persistence of the NTBs even after sixteen (16) years of implementation of the Customs Union and eleven (11) years on the Common Market.
- 3) There is a lack of a legal framework for the elimination of NTBs due to the delay in the finalization of the amendment of the EAC Elimination of Non-Tariff Barriers Act, 2017 and its Regulations.
- 4) The intra-EAC trade for a number of years has constantly remained low at about 10% while international trade has been accounting for 90% of the EAC total trade.
- 5) There is a delay in operationalizing of East African Court of Justice's (EACJ) administrative and financial Autonomy.
- 6) The service of the Judges of the East African Court of Justice (EACJ) continues to be ad-hoc and only the President and the Principal Judge are based in Arusha thus affecting the performance of the Court.
- 7) The East African Court of Justice (EACJ) is temporarily hosted in Arusha, the United Republic of Tanzania even after two decades of Regional Integration.
- 8) Following an earlier freeze on staff recruitment and a lengthy governance process, the current staffing levels for EAC organs and Institutions are not sufficient to execute the assigned mandates with serious shortages of professional staff.
- 9) There is a disparity of privileges accorded to the Organs and Institutions of the Community depending on the host Partner State. The ratification of the Protocol on Privileges and Immunities would address this challenge;
- 10) The EACJ is a key institution of EAC with powers to hear matters of interest affecting partner states, EAC organs and EAC citizens. The majority of EAC residents, particularly business owners, however, are not aware of the free services offered by the court.
- 11) The Community's newest member, the Democratic Republic of the Congo acceded to the EAC Treaty on 8th April 2022.
- 12) The EACJ has developed a case management and recording system commissioned on 30th April 2014 by EAC Heads of State during the Summit in Arusha to enable access from any location within the EAC region by authorized Court users such as Judges and Staff for purposes of filing cases. It also has levels of security protocols to curb any security threats both externally and internally. The main court registry is situated at Arusha, while sub-registries are located in courts of partner states. The sub-registries receive and file cases free of charge and immediately transmit the records to the main registry via ICT. This has enabled litigants to file matters without having to travel to Arusha.

5.0 COMMITTEE RECOMMENDATIONS

54. Arising from the deliberations and observations during the visit, the Committee made the following recommendations:

- a) **Timely payment of contributions** - Partners States should strive to pay their obligatory contributions for the smooth running of the institutions of the EAC and the for full realisation of the aspirations of the Community as espoused in the treaty establishing the East African Community,
- b) **Exploring alternative financing mechanisms** - to address the challenges associated with delayed financing, the council of ministers is encouraged to creatively explore alternative financing mechanisms including the establishment of a levy on imports to the EAC region, or exports out of the region. In accordance with Article 132 (4) of the Treaty, the founding partner states could also consider paying contributions due for South Sudan and Burundi on the BIG Brother basis and review the EAC treaty to allow partner states' contributions to be based on the ability to pay and retention of veto power by the highest paying partner states.
- c) **Amendment of the EAC Treaty** - The Council of Ministers to fastrack the finalization of the amendment of the EAC Elimination of Non-Tariff Barriers Act, 2017 and its Regulations.
- d) **Rotational hosting of the East African Court of Justice (EACJ)** - The Government through the Ministry of East African and Regional Development to formally request the Summit Heads of State to host the East African Court of Justice (EACJ) based on equality in the location of Institutions/Organs of the East African Community.
- e) **Awareness** - the EACJ is urged to partner with Member states' court registries and Partner States National Assemblies to popularize the activities of the Court.
- f) **Extra Budgetary resources** - there is a need to review the current EAC treaty and initiate mechanisms of mobilizing funds at the regional level to inspire regional ownership of EAC projects and programmes. The Council of Ministers to consider and increase the budgets of all institutions/organs of the East African Community.
- g) **Staffing in EAC institutions and organs** - The Council of Ministers is urged to urgently complete the ongoing staff recruitment process and allow appropriate professional staffing in all EAC institutions and organs.

Signed.....

Date.....04/05/2023

THE HON. WANJIKU MUHIA, M.P.
(CHAIRPERSON)